IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 415 of 1995

DATE OF DECISION: 19.7.2007

The Commissioner of Income-tax (Central), Ludhiana.

…Applicant

Versus

Shri Vir Khanna, Jalandhar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the applicant-revenue.

Mr. S.K. Mukhi, Advocate,
for the respondent-assessee.

JUDGMENT

M.M. KUMAR, J.

On an application filed by the revenue under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'), the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') has referred the question of law, which is claimed to have emerge from its order dated 8.12.1994, passed in I.T.A. No. 870(ASR)/1989 in respect of assessment year 1984-85. The Tribunal has referred the following question of law for determination of this Court:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was only prima facie case against the assessee and net complete detection of expenditure and as such the case of the assessee was covered under the Amnesty Scheme and

allowing consequential relief to the assessee by directing the decision of interest charged under section 139(8)/215?"

The assessee is an individual having income from salary, share from the firm and income from other sources. He filed his return on 31.10.1984 for the assessment year 1984-85 declaring an income at Rs. 6,22,930/-. The assessee had performed the marriage of his daughter at Taj Hotel, Delhi. During the survey conducted at Taj Hotel, Delhi, on 7.8.1984, under Section 133A(5) of the Act, certain documents relating to the marriage expenses of the assessee's daughter were discovered by the Survey Party. Accordingly, the assessee was summoned under Section 131 of the Act. He was also served alongwith a letter dated 14.11.1984, addressed by the Assessing Officer to explain the total expenditure on marriage of his daughter and the source of the aforementioned expenses. The matter was fixed on 26.11.1984 when the assessee filed the details of marriage expenses alongwith photostat copies of the bills amounting to Rs. 18,388/-. He also produced on record photostat copies of the receipts of payment made to Taj Hotel, Delhi, by two drafts of Rs. 10,000/- each. Thereafter, the assessee was confronted with a photocopy of bill of Rs. 1,26,344/- in respect of Banquet Challan, which was discovered by the Survey Party of the Department at Taj Hotel, Delhi. The assessee denied the payment or knowledge of this bill and requested for supply of copy of those documents. However, he obtained these documents subsequently from the Court where criminal proceedings for prosecution for attempting evasion of tax, under Section 276 as well as for concealment of income, were launched by the Department on 29.3.1985.

However, the assessee filed a revised return on 30.9.1985, declaring income of Rs. 6,22,970/- increasing the income of Rs. 40/- as declared in the earlier return filed on 31.10.1984. Thereafter there was announcement of an Amnesty Scheme by the Government of India for

making disclosure w.e.f. 15.11.1985, which was widely published in various meetings held by the officers of the Income-tax Department with various Traders Associations, Chambers of Commerce etc.

In pursuance to the Amnesty Scheme, the assessee revised his return further on 25.3.1986 by surrendering an amount of Rs. 80,730/- on account of the alleged difference in the expenditure incurred at Taj Hotel, Delhi and paid a sum of Rs. 54,493/- as income-tax as per the revised return on the amount surrendered. The assessee also handed over a letter dated 25.3.1986 to the Commissioner of Income-tax alongwith a copy of the tax payment challan requesting that the benefits of Amnesty Scheme may be allowed and the prosecution launched against him may be withdrawn. The prosecution was not withdrawn and subsequently the Assessing Officer passed an order dated 29.1.1987 making an addition of Rs. 79,110/- as income from undisclosed sources on account of unexplained expenditure incurred by the assessee in connection with the marriage of his daughter at Taj Hotel, Delhi. The Assessing Officer also charged interest under Section 139(8) read with Section 215 of the Act holding that the case of the assessee is not covered by the Amnesty Scheme. The view taken by the Assessing Officer was upheld by the CIT (A) vide his order dated 16.3.1989. On further appeal against the order of the CIT (A), dated 16.3.1989, the Tribunal has held that the case of the assessee was covered by the Amnesty Scheme and, as such, the departmental authorities are not justified in charging interest under Section 139(8) read with Section 215 of the Act. The reasons for the aforementioned view are explicit from paras 15 to 20, which read as under:-

> “15. From the above, it is clear that the question as to whether the benefit of Amnesty Scheme is available to the assessee or not will depend upon the fact whether the department has detected concealment in the case of the

assessee or whether it was only a prima facie belief that the assessee has not fully disclosed the expenditure in connection with the marriage of his daughter incurred by him at Hotel Taj Mehal, New Delhi. The word 'detection' has not been defined in the Income-tax Act, 1961. Dictionary meaning of the word 'detection' is discovery of something hidden or not easily observed'; state of being found out".

From the above it is clear that detection is a process which is to be followed up step by step by patient enquiry or probe. Now in the present case admittedly some steps were taken by the Survey Party in finding out certain Bills allegedly issued by Hotel Taj Mehal, New Delhi in the name of the assessee, which indicated a large amount of expenditure having been incurred by the assessee in relation to the functions performed in connection with the marriage of his daughter at Hotel Taj Mehal, whereas much smaller amount namely about Rs. 20000/- was shown as having been incurred by the assessee in his regular books of accounts but this fact will only establish a prima facie belief and the detection would be complete only after an opportunity is allowed to the assessee to rebut the evidence collected by the Survey party is (as?) to whether the expenditure shown in the bill collected by the Survey Party related to the expenditure incurred by the assessee. In the assessment order it is mentioned that the assessee was confronted with this evidence but the assessee was not allowed opportunity to cross examine Sh. Kishore Kumar Accounts Asstt. of Taj Hotel, who has admitted in the statement recorded by Sh. V.K. Mangotra, A.D.I. on 29.3.85 that he has recognised the photograph of the assessee to

be the person who made the booking by making payment of Rs. 40,000/- on 7.2.1984 and another Rs. 37,118/- on 10.2.84 and sum of Rs. 2000/- on 23.9.1983. In the books of account of the Hotel the payment are claimed to have been made by Sh. R. Goel, Sh. Harsh Vardhan and Vir Khanna respectively whereas as per the statement of Sh. Kishore Kumar, Accounts Asstt. recorded by the ADI the payments were made by Sh. Vir Khanna, whom he recognised from the photographs. However, it is an admitted position that Sh. Kishore Kumar, Accounts Asstt. was not produced by the A.O. for cases examination before the assessee.

16. The scope of Amnesty Scheme under the Wealth-tax Act was considered by the Tribunal in the case of WTO vs. Nand Kumar Pd. Shah in WTA Nos. 49 to 55/(PAT) of 1991 relating to Asstt. years 1976-77 to 1982-83 as reported in (1992) 41 ITD 406 wherein it is held that the Amnesty Scheme was intended to encourage a defaulting assessee to come forward to pay tax and have a clear slate without being penalised for defaults….

The words suo moto and expression 'detection' by the department' were used relating to cases of penalties under section 18(1)(c) to convey that benefit of Scheme would be available when concealment or suppression of assets would be discovered through raids or other efforts of the department. To avoid discovery of assets, the assessee was asked to avail benefit of Scheme within the stipulated time irrespective of what had happened in the past. The condition required was to disclose true wealth and pay taxes within the stipulated time. Circular No. 439 dated 15-11-1985 is to be considered in a liberal manner and not as a technical person

with expert knowledge would do. The circular was meant for common tax payer and should be viewed from his angle. The Amnesty Scheme is not to be read as a stature its object to encourage the defaulting assessee to come forward to disclose wealth is to be kept in mind.

17. In the above decision, it was held that the Amnesty Scheme was fully applicable even to assessments which were set aside on appeal and to cases of pending re-assessments. It was further applicable even in relation to additions made and contested by the assessee's in appeals. Only search and seizure cases were not covered under the Circular and in those cases the disclosures were not to be treated as suo moto.

18. Applying the interpretation of the Amnesty Scheme as contained in the decision of the Tribunal, referred supra, in WTA Nos. 49 to 55 (PAT) of 1991, we are of the opinion that the assessee should not be denied the benefit of non-charging of interest u/s 139(8) and 215.

19. We do not express any opinion on the question as to whether the prosecution proceedings launched against the assessee should be withdrawn in view of the Amnesty Scheme, because prosecution u/s 276C of the I. T. Act, 1961 is launched even for an attempt to evade tax and not for evasion of tax.

20. Thus keeping in view the totality of facts and circumstances of the case, we are of the opinion that the departmental authorities were not justified in charging interest u/s 139(8) and 215 in relation to the unexplained expenditure incurred on the marriage of daughter of the assessee, which was surrendered by the assessee by filing

a revised return during the period covered by Amnesty Scheme. Accordingly, the interest charged u/s 139(8) and u/s 215 is directed to be deleted."

We have heard learned counsel for the parties at a considerable length and are of the view that the order passed by the Tribunal does not suffer from any legal infirmity because Circular No. 451, dated 17.2.1986 issued by the Central Board of Director Taxes (for brevity, 'the CBDT') itself clarifies that the Income-tax Officers were required to be liberal in waiver of interest in such cases. It would be relevant to notice Question No. 5 and its answer, which was one of the questions on which clarification was sought from the CBDT, which read as under:-

" Question No. 5.- Has any time-limit within which the Commissioner of Income-tax would pass the order of waiver of penalty, interest, etc., been fixed?

Answer.- Since the Income-tax Officers have been instructed not to initiate penalty proceedings and be liberal in waiver of interest in such cases, question of waiver by CIT does not arise. The Income-tax Officers are, however, being instructed to finalise waiver proceedings by April 30, 1986."

Once the CBDT has itself desired the Assessing Officers to adopt a liberal approach with regard to waiver of interest in cases involving Amnesty Scheme and a discretion has been exercised by the Tribunal in particular way then it would not be just and proper for us to interfere in the aforementioned discretion. Even otherwise, we find that the tax incidence would also be small and, therefore, the question raised is liable to be answered against the revenue.

For the reasons stated above, the question is answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 19, 2007

Pkapoor